

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>ROBERT RANGEL</b>	)	
Claimant	)	
V.	)	
	)	Docket No. 1,075,495
<b>SHAWNEE COUNTY</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant requests review of the February 26, 2016, preliminary hearing Order entered by Administrative Law Judge (ALJ) Rebecca Sanders.

**APPEARANCES**

Robert Rangel, of Topeka, Kansas, appeared pro se. Kristina D. Schlake, of Kansas City, Kansas, appeared for self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Preliminary Hearing from February 23, 2016, with exhibits attached and the documents of record filed with the Division.

**ISSUES**

The ALJ found claimant's participation in an inmate trustee program with respondent is not an employment agreement covered by the Workers Compensation Act.

Claimant contends the ALJ erred in finding him not to be an employee within the meaning of K.S.A. 44-508, thereby denying him medical treatment. Claimant did not file a brief in support of his application. At the time of the filing of his application for Board review, he was represented by counsel. Shortly thereafter, claimant's counsel withdrew and claimant has elected to proceed pro se.

Respondent argues the ALJ's Order should be affirmed.

The issues on appeal are whether claimant was an employee within the meaning of K.S.A. 44-508, and whether claimant is entitled to medical treatment for his shoulder injury.

### **FINDINGS OF FACT**

Claimant was an inmate in the Shawnee County jail on September 15, 2015. On that date, claimant was moving a washing machine as part of his responsibility as an inmate. For his efforts, claimant was paid \$5.00 per day. Claimant was participating in an inmate trustee program which gives inmates the opportunity to participate in programs that help them learn new skills for vocational purposes. Claimant was accepted into the program on July 23, 2015.

On the date of accident, claimant was moving a washing machine that had leaked water and oil on the floor. It was claimant's responsibility to clean the water and oil off the floor. In order to do this, claimant had to first move several washing machines. Then, after cleaning the floor, claimant moved the machines back to their original positions.

When claimant was moving the machines out, it was easy because the machines slid on the oil and water on the floor. After the floor was clean and dry, moving the machines back to their original positions was more difficult and the machines did not slide as easily. While claimant was moving one of the machines, his right shoulder popped. Claimant reported the accident immediately.

Claimant was taken to the infirmary where he was examined. Claimant was provided ice for his shoulder and given ibuprofen. He was examined by a nurse, but never saw a doctor. X-rays were taken of his shoulder, which were read as normal. Claimant was restricted from working from September 16 to September 30, 2015. When released however, claimant did not return to work.

Claimant remained in jail for about one month after the accident. After being released from jail on October 13, 2015, claimant went to Stormont-Vail and St. Francis seeking treatment, but was denied same. Claimant was advised to file a workers compensation claim in order to get the medical treatment he had requested.

Prior to going to jail, claimant worked for 28 years as a licensed refrigerator handler, installing duct work. As of the preliminary hearing, claimant was not working due to the problems with his shoulder.

Claimant acknowledged he was not told that he had workers compensation coverage while in jail. The only training provided to claimant while in jail involved videos about OSHA regulations.

Cynthia Beck, Shawnee County Clerk, filed an affidavit attesting to the fact she has reviewed the records of respondent and found no record of an election to extend workers compensation coverage to the inmates participating in the "inmate trusty program" either as a volunteer or as a person performing community service work.

**PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2014 Supp. 44-501b(b)(c) states:

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2014 Supp. 44-508(b) states:

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include, but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (f) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor

or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

K.S.A. 2014 Supp. 44-508(m)

(m) "Community service work" means: (1) Public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary for children and families.

Claimant requests authorized medical treatment for his right shoulder which he injured while working as a trusty at respondent's jail. Respondent contends claimant was never an employee, instead contending claimant was in a jail community service program either as a volunteer or as a trainee.

K.S.A. 2014 Supp. 44-508(m) defines "community service work" as public or community service performed as a result of a contract of diversion or of assignment to a community corrections program. Here claimant was assigned to the training program as a corrections program to aid claimant in finding employment when he was released from jail. This program was voluntary because claimant had to request the program and be qualified to perform the training.

Either a voluntary program or a community service program requires the employer to file an election to extend coverage over the volunteer or the community service worker. In this instance, as attested to by Ms. Beck, no such election has been filed for the "inmate trusty program" either as a volunteer or a person performing community service work. Without such election, claimant cannot be found to be an employee of respondent. The denial of benefits by the ALJ is affirmed. This renders moot the question of claimant's entitlement to medical treatment for his right shoulder.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>1</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

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<sup>1</sup> K.S.A. 2014 Supp. 44-534a.

**CONCLUSIONS**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed. Claimant failed to prove he is an employee of respondent for workers compensation purposes.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Rebecca Sanders dated February 26, 2016, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April, 2016.

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HONORABLE GARY M. KORTE  
BOARD MEMBER

c: Robert Rangel, Pro Se Claimant  
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Rebecca Sanders, Administrative Law Judge